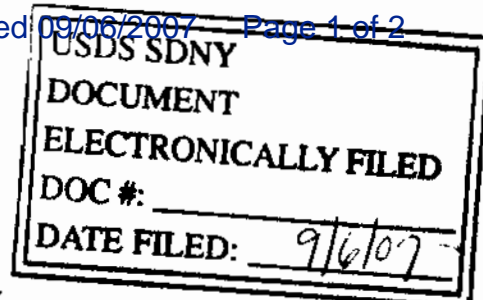


MEMO ENDORSED

MICHAEL A. CARDOZO
Corporation Counsel

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September 5, 2007

BY FAX (212) 805-6326

Honorable Colleen McMahon
United States District Judge
Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, Room 640
New York, New York 10007

9/5/2007
Either the plaintiff is agreed
by September 25 or I will
dismiss this action for
failure to comply with the
rules of the court.

Re: Winston Irving v. City of New York, et al., 07 Civ. 6075 (CM)

Your Honor:

Shawn D. Fabian
USDS

I am an Assistant Corporation Counsel in the Office of Michael A. Cardozo, Corporation Counsel of the City of New York, representing defendants City of New York ("City"), New York City Police Department ("NYPD") and Joseph Gartner ("Gartner") in the above-referenced matter. I write in preparation of the initial pre-trial conference scheduled for September 7, 2007 at 2:30 p.m.

As Your Honor may recall from defendants' letter dated August 8, 2007, defendant Gartner was originally required, pursuant to Your Honor's individual practices, to serve his motion for summary judgment on the ground of qualified immunity by August 24, 2007. To accommodate plaintiff's schedule, Your Honor graciously provided the parties with an extension of time for the taking of plaintiff's deposition, and the parties agreed that the deposition would take place on August 30, 2007. However, on August 29, 2007, this office received a telephone call from plaintiff's counsel, stating, in sum and substance, that his client would be unavailable until after September 20, 2007, due to his work schedule. In order to comply with Your Honor's individual practices and timely file defendant Gartner's summary judgment motion, we respectfully request that the Court set a date certain for plaintiff's deposition.

Additionally, on July 9, 2007 and August 30, 2007, this office forwarded to plaintiff for execution a 160.50 release and medical authorization, as plaintiff alleges that he was falsely arrested and that excessive force was used against him. To date, this office has received neither a 160.50 release nor a medical authorization from plaintiff. Because the releases are

necessary to obtain the underlying records and assess the case, defendants respectfully request that plaintiff be ordered to produce the releases by a date certain, on pain of dismissal.

Thank you for your consideration herein.

Respectfully submitted,



Shawn D. Fabian (SF 4606)
Assistant Corporation Counsel
Special Federal Litigation Division

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